Franchise Law Committee
New Franchise Case Report
September 2009

Taylor v. 1-800-Got-Junk?, LLC, 2009 WL 2014186 (W.D.Wash. July 9, 2009)

Franchisees brought an action against their franchisor alleging breach of contract, violations of the Washington Franchise Investment Protection Act ("FIPA") and Consumer Protection Act, misrepresentation and infliction of emotional distress. The franchisor moved for summary judgment on the ground that the parties had previously entered into a settlement agreement wherein the franchisees had released all claims relating to the failed franchise. The franchisees argued that the release was void because it violated the FIPA, which invalidates a release of FIPA claims unless the franchisee is represented by independent counsel.

The franchisor is a Delaware corporation headquartered in Vancouver, B.C., Canada and the franchisees are Oregon residents who purchased a franchise to operate a location in Southern Oregon. The franchise agreement in question provided that it "shall be construed and interpreted according to the laws of the State of Washington" The court was, therefore, presented with the issue whether FIPA applied to the relationship at issue.

The court determined that the fact that Washington law applied to the agreement did not necessarily mean that FIPA applied to the relationship. FIPA only applies to claims based on conduct occurring "in this state." According to the legislative history for FIPA, the statutory meaning of "in this state" under FIPA essentially parallels the meaning under the California Franchise Investment Law. The court concluded that because FIPA limits the scope of its protection to franchise-related conduct occurring "in this state," the Oregon-based franchisees were not protected by FIPA's anti-waiver provision with respect to their relationship with their Vancouver-based franchisor.

Dunkin' Donuts Franchised Restaurants, LLC v. Grand Central Dounts, Inc., Bus. Franchise Guide (CCH) ¶ 14,169 (E.D.N.Y. June 19, 2009)

A donut shop franchisee and area developer served discovery requests to the franchisor seeking broad-sweeping information with respect to whether the franchisor approved other franchisees to open new stores when they had a performance rating of a certain level. The franchisor objected to the requests on the grounds that the requests imposed an undue burden. The franchisee filed a motion to compel. While the court agreed with the franchisee that its discovery requests had sought relevant information, the court found the request too broad as formulated and limited the scope of the requests to a previously-determined geographic region and to a three-year period of time.

Atlanta Bread Company International, Inc. v. Lupton-Smith et al., Bus. Franchise Guide (CCH) ¶ 14,172 (Ga. Supreme Court June 29, 2009)

The plaintiffs entered into franchise agreements to operate four retail bakery/deli locations in Atlanta, Georgia and one store in Knoxville, Tennessee. The franchise agreements provided that, without prior written consent, the franchisees shall not directly or indirectly engage in, or acquire any financial or beneficial interest in, advise, help, guarantee loans or make loans to, any bakery/deli business whose method of operation is similar to that employed by stores units in the franchise system. During the term of the franchise agreements, the franchisees opened and began operating a coffee lounge in Atlanta.

The Georgia Supreme Court first noted that Georgia deems contracts that generally restrain trade to be void as against public policy. It further noted that, under Georgia law, franchise agreements that contain restrictions on trade are subject to strict scrutiny, receiving the same treatment as noncompetition covenants found in employment contracts. Specifically, the court noted that "a noncompetition covenant entered into in connection with a franchise or employment contract is enforceable, but only where it is strictly limited in time and territorial effect and is otherwise reasonable considering the business interest of the party sought to be protected and the effect on the franchisee."

The franchisor argued that the noncompetition covenant should receive less than strict scrutiny because the restraint occurs during the term of the franchise agreement rather than after the agreement's termination. The Georgia Supreme Court rejected the franchisor's argument, held that the provision in the agreement at issue was void and refused to apply the blue-pencil doctrine because the provision at issue had no territorial restriction.